

Finding of Emergency

The Department of Justice (Department) finds that an emergency exists, and that the immediate amendment of section 4001 of the California Code of Regulations (CCR) Title 11, Division 5, Chapter 1 is necessary for the preservation of the public's safety, peace, health, and general welfare.

Government Code section 11346.1, subdivision (a)(2), requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law (OAL), the Department provide a notice of this proposed action to every person who has filed a request for notice of regulatory action with the agency. To this end, the Department will post the proposed emergency regulations on its website and simultaneously disseminate notice of the proposed emergency action to all persons who have filed a request for notice.

After submission of the proposed emergency regulations to the OAL, the OAL shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. If you would like to comment on the Finding of Emergency or the proposed emergency regulations, those comments must be in writing, contain a notation that identifies the topic of the emergency regulation to which they relate, and be received by both the Department and the OAL within five days of the Department's filing with OAL. To determine the OAL's five-day comment period, please visit <http://www.oal.ca.gov/>.

Subject Matter of Proposed Regulation Amendments

Dealer Record of Sale (DROS) Fee

Existing Regulation to Be Amended

Title 11, section 4001

Specific Facts Demonstrating the Existence of an Emergency and the Need for Immediate Action

Existing law allows the Department to require a firearms dealer to charge each firearm purchaser a fee, called the "DROS Fee," at the time of a transfer of firearms (a "DROS transaction"). The DROS fee is currently \$19, as set by the CCR, Title 11, Section 4001, and authorized by Penal Code sections 28225 and 28230.

The DROS Fee is deposited in the Dealers' Record of Sale Special Account of the General Fund (the "DROS Fund"), and is appropriated by the Legislature to offset certain costs incurred by the Department's Bureau of Firearms (the Bureau), as specified by Penal Code section 28225, subdivision (b) and section 28230, subdivision (a). The bulk of the DROS Fee revenue pays for activities referenced in Penal Code section 28225, subdivision (b)(11) — regulatory and enforcement activities conducted pursuant to Penal Code section 16580. Section 16580, subdivision (a)(43) references Penal Code sections 23500 to 30290, inclusive, which authorize

or mandate most of the activities of the Bureau. As explained below, these emergency regulations are necessitated by a recent legislative change in the funding of critical firearms-related Departmental activities.

Change in Legislation

Assembly Bill (AB) 1669, effective January 1, 2020, decreases the fee authorized by Penal Code section 28225 to \$1. More pertinently, AB 1669 removes the reference to section 16580 from section 28225, subdivision (b)(11). The remaining references in section 28225 specify various programs that may be funded by a fee that, as of January 1, 2020, may not exceed \$1. The Department anticipates promulgating regulations to set this fee in a separate rulemaking package.

AB 1669 adds a new section to the Penal Code, section 28233. Subdivision (b) of that section authorizes a new \$31.19 fee for regulatory and enforcement activities related to the sale, purchase, manufacturing, lawful or unlawful possession, loan, or transfer of firearms pursuant to any provision listed in section 16580. This is the reference deleted from section 28225, the section that currently provides the basis for the fee that funds background checks and other specified firearms-related programs. Because the new fee in section 28233 funds the activities specified by section 16580, and because this fee is the principal fee charged at the time of each DROS transaction, the Department is naming the fee authorized by section 28233 the “DROS Fee.”

Although Penal Code section 28233 grants authority to the Department to require a firearms dealer to charge a \$31.19 fee, the statute is not self-executing. The Department may promulgate regulations to implement the fee. This emergency action amends Title 11, Section 4001 of the California Code of Regulations, to set the fee at \$31.19. Penal Code section 28233 does not grant the Department the discretion to set the initial fee at any other amount. But the amount of the fee must not exceed the cost of the regulatory program. (*California Assn. of Professional Scientists v. Department of Fish & Game* (2000) 79 Cal.App.4th 935, 939.)

If the Department does not implement the fee authorized by Penal Code section 28233, the Department estimates that in fiscal year 2019-20 the decrease in revenue would result in a deficit of almost \$20,000,000.

Even if the DROS Fee is set at \$31.19, the Department estimates that in fiscal year 2019-20 the DROS Fee revenue will still result in a deficit.

DROS Fee Revenue

Table 1 (below) shows revenue from the current DROS Fee, and the projected revenue that the Department anticipates will result from the adoption of these emergency regulations. This table does not include other sources of revenue that are also deposited into the DROS Fund (e.g., the fees authorized by Penal Code sections 23690 and 28300).

The first row shows the total number of actual and projected DROS transactions each year. Firearm sales numbers are relatively stable, but are sensitive to new legislation and anticipated

political developments. The Department, without further information regarding future sales, projects that the level of transactions will remain steady in the ongoing years. The projected number of DROS transactions for this fiscal year and the next two fiscal years approximates an average of the number of DROS transactions in the last two fiscal years.

The second row shows the number of actual and projected *billable* DROS transactions each year. Per Penal Code section 28240, for a transaction of any number of firearms on the same date, only one billable fee may be charged. Because some people purchase multiple firearms in a single transaction, the number of billable DROS transactions are fewer than the total number of DROS transactions.

The third row shows the amount of actual and projected DROS Fee revenue. Through December 31, 2019, the DROS Fee is \$19 per billable DROS transaction. Because the Department will lose the authority to charge the \$19 DROS Fee on January 1, 2020, the projection for FY 2019-20 includes half of a year’s worth of billable DROS transactions at the \$19 fee level and half of a year’s worth of billable DROS transactions at the \$31.19 fee level. The revenue estimates for FY 2020-21 and subsequent fiscal years reflect anticipated collections of the \$31.19 fee.

Without the adoption of this emergency regulation, the DROS Fee revenue is projected to drop to \$6,688,693 for FY 2019-20 (with all revenue generated prior to January 1, 2020) and \$0 thereafter.

DROS Fee Expenditures

The DROS Fee is currently and, after January 1, 2020, will continue to be deposited in the DROS Fund. The monies are then appropriated by the Legislature for expenditure by the Department.

As authorized by Penal Code section 28233, the DROS Fee will pay for the costs of operating, in whole or in part, the firearms-related programs listed below.

Program	Penal Code Statutes Implemented
Automated Firearms Systems Unit*	18100, 30000
Armed & Prohibited Persons Section*	30000
Phone Resolution Unit	28220
Law Enforcement Release Unit*	33850, excepting those activities specified in section 33860
Carry Concealed Weapon Permits Unit*	26175, excepting those activities specified in section 26190
Background Clearance Unit	28220
Training, Information and Compliance Section*	Chapter 2, excepting those activities specified in section 26720
Customer Support Center	28215
Reporting and Quality Assurance Section	28215
Administration and Special Projects Section*	Penal Code, Part 6, Title 4

NOTE: An asterisk (*) indicates that the program is not wholly funded through DROS Fee revenue. Certain functions of specified programs are funded through separate fee and General Fund monies, as specified in statute.

These programs are largely concerned with background checks on potential firearms purchasers or transferees. As required by Penal Code Part 6, Title 4, Div. 6, Chapter 6, a firearm dealer must submit to the Department certain identifying information for every potential firearm purchaser or transferee. As required by Penal Code Section 28220, the Department then examines available records to determine whether the potential purchaser or transferee is prohibited by state or federal law from possessing, receiving, owning or purchasing a firearm. If the Department determines that the purchaser is prohibited by state or federal law from possessing, receiving, owning, or purchasing a firearm (e.g., convicted felons; persons found to be a danger to self or others because of a mental illness; persons addicted to the use of narcotics; et cetera), the Department immediately notifies the dealer and the pending sale is terminated.

More specifically: the Background Clearance Unit examines available records concerning the potential purchaser or transferee, and determines whether the individual is prohibited. The Phone Resolution Unit tracks down information that is not immediately available, such as incomplete court records. The Reporting and Quality Assurance Section reviews DROS records and determinations for accuracy. The Customer Support Center answers questions from dealers as to how to complete the Dealer Record of Sale. The Automated Firearms System Unit maintains the Automated Firearms System, a repository of firearm records maintained by the Department. The Armed & Prohibited Persons Section matches records of persons who own or have possessed a firearm (usually subsequent to a DROS transaction) with evidence that the person may be newly prohibited (e.g., a restraining order). Each of these activities is necessary to the process of ensuring that prohibited persons are not allowed to purchase or possess a firearm.

Over the years, the Department has been forced to significantly reduce DROS program activities and expenditures in order to operate within the available DROS Fund revenues, which are well below the appropriation levels established by the Legislature for these critical public safety firearms programs. For example, the Bureau of Firearms has maintained only baseline program functionalities with an average personnel vacancy rate of 18 percent over the last three years; has postponed significant facility infrastructure projects; and has delayed necessary information technology refreshes in order to maintain solvency in the DROS Fund. The Department anticipates that the cost to refresh and rebuild its aging IT systems will total approximately \$2,352,000 in FY 2020/21 for planning and other initial costs, and then \$8,275,000 annually for a five year period.

Table 2 (below) shows a side-by-side comparison of projected DROS Fund revenues and estimated expenditures by the Department from the DROS Fund. DROS Fee revenue projections for each fiscal year are taken from Table 1.

The second row shows all other sources of revenue that are also deposited into the DROS Fund, such as other fees, transfers and other adjustments. Notably, for Fiscal Year 2020-21, two loans to the DROS Fund from the Firearms Safety and Enforcement Fund, totaling \$5,844,000, will

be repaid to the Firearms Safety and Enforcement Fund. This is depicted in the table as a revenue offset for that fiscal year.

The first and second rows, combined, make up the total projected DROS Fund Revenue for fiscal years 2019-20 through 2022-23.

Departmental expenditures include its appropriation for salaries and benefits, operating expenses and equipment; a supplemental pension loan repayment of \$666,000; a Pro Rata cost of \$819,000 (which increases to \$1,226,000 in 2020-21), and the anticipated cost to refresh and rebuild legacy firearms IT systems.

The third row shows DROS Fund appropriations, which are expended by the Department for salaries and benefits, operating expenses and equipment. Historically, due to insufficient fee revenues, appropriations from the DROS Fund have exceeded DROS Fund revenues, resulting in an operational deficit. Until now, the shortfall has been offset by spending down the fund balance, shifting Departmental resources from other Departmental priorities, and holding critical positions vacant. The Department's appropriations estimate for FY 2020-21 through 2022-23 are lower than for 2019-20 due to the removal of limited-term funding that will expire in FY 2020-21. The estimate does not reflect any other changes to appropriations, as such changes are made through the legislative and budgetary processes.

The pension loan repayment is a result of the 2017-18 budget package (Chapter 50 [SB 84, Committee on Budget and Fiscal Review]) that was approved as part of the Governor's May Revision proposal. The state borrowed \$6 billion from the Pooled Money Investment Account to make a one-time supplemental payment to the California Public Employees' Retirement System. All funds that make pension payments, including the General Fund and most other state funds, must repay the loan over the next decade. While the General Fund started repaying the loan in 2017-18, other funds (i.e., the DROS Fund) began payments in 2018-19.

The Pro Rata cost is the cost of central service agencies, such as the Department of Finance, the State Treasurer, the State Controller, and the Legislature for providing budgeting, banking, accounting, auditing, payroll, and other services to all state departments. The Pro Rata process apportions the costs of providing central administrative services to all state departments and funding sources that benefit from the services. Amounts apportioned to special funds (i.e. the DROS Fund) for their fair share of central administrative services costs are transferred from the special funds to the General Fund and the Central Service Cost Recovery Fund.

The Department is currently in the beginning stages of refreshing and rebuilding its firearms information technology (IT) systems. Since 1980, the Department has built and maintained numerous firearms IT systems in order to comply with various legislative mandates. Over the past 40 years the systems have become out of date and have effectively reached the end of their life. It is no longer efficient to make modifications to the current systems each year in response to new legislative requirements. In response, the Department has been working towards a system refresh and rebuild, which will modernize its firearms IT systems into one cohesive unit that is adaptable to future needs. This modernization is projected to cost over \$40,000,000, and will last at least five years. At that time, the Department will have a better estimate of its future expenditures, and at that time can readjust the fee as necessary.

DROS Fund Deficit

If the DROS Fee increases from \$19 to \$31.19 on January 1, 2020, the Department estimates that in fiscal year 2019-20 the DROS Fee revenue will still result in a DROS Fund deficit of \$1,862,000. For Fiscal Years 2020/21 through 2025/26, with the addition of the Firearms IT System Modernization costs, the Department estimates that this deficit will grow to over \$3,500,000 each year. (All estimates past FY 2021/22 reflect the same conditions as FY 2021/22.)

If, instead, the DROS Fee decreases to \$0 on January 1, 2020, the Department estimates that in FY 2019-20 the DROS Fund will have a deficit of almost \$20,000,000. This deficit increases to over \$25,000,000 for each fiscal year thereafter (see **Table 3**, below).

Immediate, Serious Harm

Unless regulations are promulgated to implement the new DROS Fee, on January 1, 2020, the Department will lose the entirety of its DROS Fee revenue. Historically, the DROS Fee accounts for approximately 70% of the revenue collected by the Bureau. The remaining revenue comes from loans and dedicated fees, such as permits for firearms used on movie sets. The loss of the DROS Fee would result in the insolvency of the Bureau and the discontinuance of most of the Department's firearms-related regulatory and enforcement activities.

Serious harm would result from discontinuing the Bureau's activities, especially those directly related to checking the background of potential firearm purchasers or transferees. Each of the activities described above is necessary to ensure that a person prohibited by state or federal law does not purchase or maintain possession of a firearm. The ownership or possession of a firearm by convicted felons, persons found to be a danger to self or others because of a mental illness, persons addicted to the use of narcotics, and other prohibited persons pose a risk of immediate, serious harm to the people of the state of California.

Meeting this threat requires a consistent revenue stream that is directly related to the number of firearms sold and possessed in the state. Penal Code section 28233 structures the DROS Fee in exactly this manner. The Bureau cannot rely on funding from other sources (e.g., directly from the General Fund) that are unable to account for fluctuations in the number of firearms sold and thus the number of required background checks and related activities.

Explanation of Failure to Adopt Nonemergency Regulations

The Department has not yet adopted non-emergency regulations because of the timeline presented by the passage of AB 1669. Governor Newsom signed AB 1669 into law on October 11, 2019. The changes made by that bill become operative on January 1, 2020, only 82 days after the bill was chaptered. This does not provide enough time to complete the regular rulemaking process.

Authority and Reference Citations

Authority: Sections 28233 and 28240, Penal Code.

Reference: Sections 28225, 28230, 28233, 28235, and 28240, Penal Code.

Informative Digest/Policy Statement

Existing law allows the Department to require a firearms dealer to charge each firearm purchaser a fee, called the “DROS Fee,” for the transfer of one or more firearms at the same time to the same transferee. This fee is currently set at \$19.

As of January 1, 2020, the DROS Fee will be \$31.19.

Fiscal Impact Disclosures Regarding the Proposed Action

The Department has made the following initial determinations:

Mandate on local agencies or school districts: None.

Cost to any local agency or school district which shall be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Cost of savings to the state: The new fee will generate revenue for the Bureau to offset the costs of its regulatory and enforcement activities. The Bureau anticipates that its costs will be approximately \$25 million per year, and that it will receive approximately \$23 million per year in revenue.

TABLE 1: REVENUE (Actual and Projected)

	FY 17-18	FY 18-19	FY 19-20 (Projected)	FY 20-21 (Projected)	FY 21-22 (Projected)
Total DROS Transactions	857,536	789,540	809,279	809,279	809,279
Billable DROS Transactions	752,302	683,380	704,073	704,073	704,073
Revenue from \$19/\$31.19 DROS Fee	\$14,293,738	\$12,984,220	\$17,668,712	\$21,960,037	\$21,960,037

TABLE 2: EXPENDITURES (Projected)

	FY 19-20 (Projected)	FY 20-21 (Projected)	FY 21-22 (Projected)	FY 22-23 (Projected)
(+) DROS Fund Revenue from \$19/\$31.19 DROS Fee	\$17,668,712	\$21,960,037	\$21,960,037	\$21,960,037
(+) DROS Fund Revenue from other sources including transfers & other adjustments	\$6,749,288	\$391,000	\$6,235,000	\$6,235,000
(-) DROS Appropriation	\$24,795,000	\$21,778,000	\$21,778,000	\$21,778,000
(-) Pension Loan Repayment & Pro Rata	\$1,485,000	\$1,892,000	\$1,892,000	\$1,892,000
(-) Firearms IT System Modernization	N/A	\$2,352,000	\$8,275,000	\$8,275,000
Deficit	(\$1,862,000)	(\$3,670,963)	(\$3,749,963)	(\$3,749,963)

TABLE 3: DEFICIT WITH A \$0 DROS Fee (Projected)

	FY 19-20 (Projected)	FY 20-21 (Projected)	FY 21-22 (Projected)	FY 22-23 (Projected)
Deficit	(\$19,530,712)	(\$25,631,000)	(\$25,710,000)	(\$25,710,000)